

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2005 JAN 27 P 2:17

U.S. DISTRICT COURT
DISTRICT OF MASS.

GREAT NORTHERN INSURANCE COMPANY
as Subrogee of Jon and Abby Winkelreid
200 S. 6th Street
Suite 1000
Minneapolis, Minnesota 55402-1470

CIVIL ACTION NO:

05 cv 10165 RGS

vs.

FERGUSON & SHAMAMIAN ARCHITECTS, LLP
270 Lafayette Street
Suite 300
New York, New York 10012

and

W.B. MARDEN, COMPANY
2 Milk Street
Nantucket, Massachusetts 02554

RECEIPT # 61690
AMOUNT \$ 150.00
SUMMONS ISSUED 2
LOCAL RULE 4.1 -
WAIVER FORM -
MCF ISSUED -
BY DPTY. CLK. RJS
DATE 1/27/05

MAGISTRATE JUDGE RBC

COMPLAINT

Plaintiff, Great Northern Insurance Company a/s/o of Jon and Abby Winkelreid, by and through its attorneys Cozen O'Connor, upon information and belief, hereby alleges the following:

PARTIES

1. Plaintiff, Great Northern Insurance Company (hereinafter "Great Northern"), is a Minnesota Corporation, with its principal place of business located at 200 S. 6th St., Suite 1000, Minneapolis, Minnesota 55402-1470, and at all times material hereto was authorized to issue insurance policies in the Commonwealth of Massachusetts.

2. At all times material hereto, Great Northern insureds Jon and Abby Winkelreid (hereinafter “the plaintiff’s insureds” or “the Winkelreids”), were individuals and owners of the property located at 15 Cathcart Road, Nantucket, Massachusetts (hereinafter “the subject property”).

3. Defendant, Ferguson and Shamamian Architects, LLP (hereinafter “Ferguson), is a New York Corporation, with its principal place of business located at 270 Lafayette Street, Suite 300, New York, NY and at all times material hereto was engaged in the business of, *inter alia*, customized building design.

4. Defendant, W.B. Marden Co. (hereinafter “Marden”), is a business entity licensed and authorized to do business in the Commonwealth of Massachusetts, with its principal place of business located at 2 Milk Street, Nantucket, Massachusetts and at all times material hereto was engaged in the business of, *inter alia*, providing residential plumbing and heating contracting services.

JURISDICTION AND VENUE

5. Jurisdiction is invoked under the provisions of 28 U.S.C. §1332 as this is an action between citizens of different states.

6. The amount in controversy, exclusive of interest and costs, exceeds the sum of Seventy-five Thousand (\$75,000.00) Dollars.

7. Venue is proper in this jurisdiction pursuant to 28 U.S.C. §1391.

FACTUAL ALLEGATIONS

8. At all times material hereto, the Winkelreids owned the subject property.

9. At all times material hereto, plaintiff provided property insurance coverage under policy No. 11574766-08 (hereinafter “subject policy”) to the Winkelreids insuring its real and personal property at the subject premises.

10. Prior to January 19, 2004, plaintiff’s insureds contracted with defendant Ferguson to design the subject property.

11. Prior to January 19, 2004, defendant Marden was contracted to provide plumbing services, including but not limited to, the installation of domestic water lines in the subject premises during its construction.

12. On or about January 19, 2004, a domestic water pipe located in an unheated void space adjacent to the chimney chase in the subject premises froze and subsequently ruptured.

13. This incident occurred because the domestic water pipe was improperly installed in an area exposed to foreseeably cold and freezing temperatures.

14. As a direct consequence of this frozen and ruptured domestic water pipe, water flooded portions of the premises causing severe and extensive damage to the subject premises and its contents.

15. Pursuant to the terms and conditions of the subject insurance policy, Great Northern made payments to its insured for the damages sustained in the amount of Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72).

16. In accordance with the common law principles of legal and equitable subrogation, Great Northern is subrogated to the rights of its insureds with respect to the damages compensable under the policy.

COUNT I

PLAINTIFF v. DEFENDANT FERGUSON & SHAMAMIAN ARCHITECTS, LLP

NEGLIGENCE

17. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 16 as if the same were fully set forth at length herein.

18. The damages sustained in this loss were the direct result of the negligence, carelessness and/or reckless conduct of the personnel and/or agents of defendant Ferguson and Shamamian Architects, LLP, including but not limited to the following ways:

- (a) Failing to properly design the subject property;
- (b) Failing to ensure that the subject property was free of latent defects;
- (c) Failing to properly and safely perform design activities at the subject property thereby increasing the risk of hazards occurring thereto, including water damage;
- (d) Failing to properly, adequately and safely design, engineer, build and/or construct the attic space of the subject property;
- (e) Failing to perform its design and architectural work and services in accordance with the terms, conditions and provisions of all applicable written and/or oral contracts, agreements, plans and specifications;
- (f) Failing to properly, adequately and safely design, engineer, build and/or construct the plumbing system of the subject property;
- (g) Violating statutes, codes and industry standards during the design of the subject property including, but not limited to, violations regarding the design, engineering and construction of the subject property including, but not limited to, failing to install required insulation and/or heating to

portions of the subject property that would be exposed to air temperatures at or below freezing;

- (h) Failing to exercise reasonable care in the performance of the design of the subject property;
- (i) Failing to use due care and skill under the circumstances; and
- (j) Such other and further negligent acts or omissions which may be revealed through discovery.

19. As a direct and proximate result of the aforesaid negligence, carelessness and/or negligent acts and/or omissions of defendant Ferguson, the domestic water pipe froze and ruptured, resulting in substantial damages to the Winkelreids' real and personal property.

20. Pursuant to the terms and conditions of the subject insurance policy, Great Northern did make payments to its insureds for the damages so sustained, the total amount of those payments being Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72).

21. In accordance with the common law principles of legal and equitable subrogation, Great Northern is subrogated to the rights of its insured with respect to the damages compensable under the policy.

WHEREFORE, plaintiff, Great Northern Insurance Company a/s/o Jon and Abby Winkelreid, demands judgment in its favor and against defendant, Ferguson and Shamamian Architects, LLP, in the amount of Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72) together with interest and costs of this action.

COUNT II

PLAINTIFF v. DEFENDANT W.B. MARDEN COMPANY

NEGLIGENCE

22. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 21 as if the same were fully set forth at length herein.

23. The damages sustained in this loss were the direct result of the negligence, carelessness and/or reckless conduct of the personnel and/or agents of defendant W.B. Marden Company, including but not limited to the following ways:

- (a) Failing to properly perform construction, installation and/or maintenance of the domestic water lines in the subject property;
- (b) Failing to ensure that the subject property was free of latent defects;
- (c) Failing to properly and safely perform construction activities at the subject property thereby increasing the risk of hazards occurring thereto, including water damage;
- (d) Failing to insulate the area of the subject domestic water pipe within its space so as to prevent foreseeably cold temperatures from entering the premises and causing the subject domestic water pipe to freeze and rupture;
- (e) Failing to protect freezing temperatures from compromising the integrity of the subject domestic water pipe located at the premises;
- (f) Failing to perform construction, installation, service and/or maintenance work in accordance with the terms, conditions and provisions of all applicable written and/or oral contracts, agreements, plans and specifications;
- (g) Violating statutes, codes and industry standards during the design, installation, service and/or maintenance of the plumbing system at the subject property including, but not limited to, violations regarding the design, engineering and construction of the plumbing system at the subject property including, but not limited to, failing to install required insulation and/or heating to portions of the subject property that would be exposed to air temperatures at or below freezing;
- (h) Failing to maintain, service and/or repair the plumbing system at the subject property;
- (i) Otherwise failing to use due care under the circumstances.

24. As a direct and proximate result of the aforesaid negligence, carelessness and/or negligent acts and/or omissions of defendant Marden, the domestic water pipe froze and ruptured, resulting in substantial damages to the Winkelreids' real and personal property.

25. Pursuant to the terms and conditions of the subject insurance policy, Great Northern did make payments to its insureds for the damages so sustained, the total amount of those payments being Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72).

26. In accordance with the common law principles of legal and equitable subrogation, Great Northern is subrogated to the rights of its insured with respect to the damages compensable under the policy.

WHEREFORE, plaintiff, Great Northern Insurance Company a/s/o Jon and Abby Winkelreid, demands judgment in its favor and against defendant, W.B. Marden Company, in the amount of Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72) together with interest and costs of this action.

COUNT III

PLAINTIFF v. DEFENDANT W.B. MARDEN COMPANY

BREACH OF WARRANTY

27. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 26 as if the same were fully set forth at length herein.

28. Defendant Marden agreed to perform its installation services, including but not limited to, the design, installation, inspection and activation of the aforesaid domestic water lines

in a good, safe and workmanlike manner, free from defects and in accordance with all applicable codes and standards.

29. Defendant Marden breached its expressed and/or implied warranties that its construction work, including, but not limited to, the design, installation, inspection and activation of the aforesaid domestic water lines would be performed in a good, safe and workmanlike manner, free from defects and in accordance with all applicable codes and standards.

30. As a direct and proximate result of Marden's breach of express and/or implied warranties, plaintiff's insured suffered substantial water damage to their real and personal property for which Great Northern paid its insured.

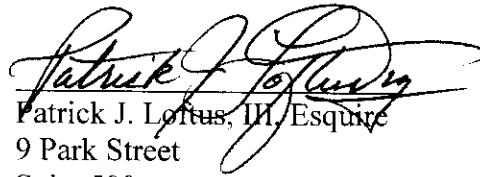
31. Pursuant to the terms and conditions of the subject insurance policy, Great Northern did make payments to its insureds for the damages so sustained, the total amount of those payments being Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72).

32. In accordance with the common law principles of legal and equitable subrogation, Great Northern is subrogated to the rights of its insured with respect to the damages compensable under the policy.

WHEREFORE, plaintiff, Great Northern Insurance Company a/s/o Jon and Abby Winkelreid, demands judgment in its favor and against defendant, W.B. Marden Company, in the amount of Eight Hundred Seven Thousand Five Hundred Ninety Dollars and Seventy-Two Cents (\$807,590.72) together with interest and costs of this action.

Respectfully submitted,

BY:

A handwritten signature in black ink, appearing to read "Patrick J. Loftus, III". The signature is stylized with a large, sweeping "P" and "L".

Patrick J. Loftus, III, Esquire
9 Park Street
Suite 500
Boston, Massachusetts 02108
(617) 723-7770

Of Counsel:
COZEN AND O'CONNOR
ROBERT M. CAPLAN, ESQUIRE
Attorney for Plaintiff, Great Northern Insurance Company
a/s/o Jon and Abby Winkelreid

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS

Great Northern Insurance Company a/s/o
Jon and Abby Winkelreid

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

Hennepin
(MN)

DEFENDANTS

Ferguson and Shamamian Architects, LLP
and
W.B. Marden Company

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

New York (NY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Patrick J. Loftus III
9 Park Street, Suite 500
Boston, MA 02108
617.723.7770

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|---|---|--|
| Citizen of This State | PTF DEF
<input type="checkbox"/> 1 <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF DEF
<input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input checked="" type="checkbox"/> 2 <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY

28 USC 1332(a)(1)

V. NATURE OF SUIT

(PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury—Med Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input checked="" type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23

DEMAND \$ 500,000

Check YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

1/26/05

SIGNATURE OF ATTORNEY OF RECORD

Patrick J. Loftus III

UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Great Northern Insurance Company
also Jon and Abby Winkelreid v. Ferguson and Shamshanian Architects, et al.
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(II)).

— I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.

— II. 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730,
740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950.

X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.

— IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.

— V. 150, 152, 153.

U.S. DISTRICT COURT
DISTRICT OF MASS.

05 10165 RGS

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).

n/a

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

n/a

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? n/a

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 2403) _____

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? n/a

7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES No OR IN THE WESTERN SECTION (BERKSHIRE FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES No

8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES No (a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____

9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Nantucket

10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION _____ OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME

Patrick J. Loftus, III

ADDRESS 9 Park Street, Suite 500

Boston, MA 02108

TELEPHONE NO. 617-723-7770